



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2022-0306; FRL-9713-01-R9]

Air Quality State Implementation Plans; Approvals and Promulgations: California; San Diego County Air Pollution Control District; Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve four permitting rules submitted as a revision to the San Diego County Air Pollution Control District (SDAPCD or “District”) portion of the California State Implementation Plan (SIP). These revisions concern the District’s New Source Review (NSR) permitting program for new and modified sources of air pollution under section 110(a)(2)(C) and part D of title I of the Clean Air Act (CAA or “Act”). This action will update the District’s applicable SIP with rules revised to address a deficiency identified in a previous limited disapproval action. We are taking comments on this proposal and plan to follow with a final action. Elsewhere in this issue of the ***Federal Register***, we are making an interim final determination that will defer the imposition of CAA sanctions associated with our previous limited disapproval action. This action also proposes to revise regulatory text to clarify that San Diego County is not subject to the Federal Implementation Plan related to protection of visibility.

DATES: Comments must be received on or before [Insert date 30 days after date of publication in the ***Federal Register***].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2022-0306 at <https://www.regulations.gov>. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not

submit electronically any information you consider Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit

<https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

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SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us,” and “our” refer to the EPA.

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I. The State’s Submittal

- A. *What rules did the State submit?*

Table 1 lists the rules addressed by this proposal with the dates when they were amended by the District and submitted by the California Air Resources Board (CARB). These rules constitute part of the District’s current program for preconstruction review and permitting of new or modified stationary sources under its jurisdiction. The rule revisions that are the subject of this action represent an update to the SDAPCD’s preconstruction review and permitting program and are intended to satisfy the requirements under part D of title I of the Act (“Nonattainment NSR” or “NNSR”) as well as the general preconstruction review requirements under section 110(a)(2)(C) of the Act (“Minor NSR”).

TABLE 1 - SUBMITTED RULES

Rule #	Rule Title	Amended Date	Submitted Date
11	Exemptions From Rule 10 Permit Requirements	7/8/2020	9/21/2020
20.1	New Source Review – General Provisions	10/14/2021	2/2/2022
20.3*	New Source Review – Major Stationary Sources and PSD Stationary Sources	10/14/2021	2/2/2022
20.4*	New Source Review – Portable Emission Units	10/14/2021	2/2/2022

* The following subsections of the Rules 20.3 and 20.4 were not submitted to the EPA for inclusion in the San Diego SIP: Rule 20.3 Subsections (d)(1)(vi), (d)(2)(i)(B), (d)(2)(v), (d)(2)(vi)(B) and (d)(3); and Rule 20.4 Subsections (b)(2), (b)(3), (d)(1)(iii), (d)(2)(i)(B), (d)(2)(iv), (d)(2)(v)(B), (d)(3) and (d)(5).

On March 21, 2021, the submittal of Rule 11 became complete by operation of law. On March 28, 2022, the EPA determined that the February 2, 2022 submittal of revised Rules 20.1, 20.3, and 20.4 met the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

The SIP-approved versions of the submitted rules are identified below in Table 2.

TABLE 2 – SIP APPROVED RULES

Rule #	Rule Title	SIP Approval Date	<i>Federal Register</i> Citation
11	Exemptions	10/4/18	83 FR 50007
20.1	New Source Review – General Provisions	9/16/20	85 FR 57727
20.3	New Source Review – Major Stationary Sources and PSD Stationary Sources	9/16/20	85 FR 57727
20.4	New Source Review – Portable Emission Units	9/16/20	85 FR 57727

If the EPA finalizes the action proposed herein, these rules will be replaced in the SIP by the submitted set of rules listed in Table 1. Additionally, as described below, the EPA’s final approval of Rule 20.1 will address our previous limited disapproval.

C. What is the purpose of the submitted rule revisions?

As described in further detail below, the submitted rules are intended to resolve the NSR program deficiency we identified in our September 16, 2020 final action (“2020 NSR Action”),¹ which included a limited disapproval of a prior version of Rule 20.1. In addition, the submitted rules are intended to demonstrate that the District’s NNSR program meets the requirements applicable to San Diego County following the EPA’s June 2, 2021 reclassification of San Diego County as a Severe nonattainment area for the 2008 and 2015 ozone national ambient air quality standards (NAAQS).² Other minor revisions in the rules revise some permit exemptions, provide minor edits, and address recent changes to regulatory requirements related to interpollutant trading (IPT) of offsets.

II. The EPA’s Evaluation and Action

A. How is the EPA evaluating the rules?

The EPA has evaluated the submitted rules to determine whether they address the deficiency identified in our 2020 NSR Action. We have also evaluated the rules for compliance with applicable regulations at 40 CFR 51.160 through 51.165, consistent with the District’s current classification as a Severe nonattainment area for both the 2008 and 2015 ozone standards, and including the recent removal of provisions related to IPT of offsets made in response to the D.C. Circuit Court of Appeals decision in *Sierra Club v. EPA*, 21 F.4th 815 (2021).³ We have also reviewed the rules for consistency with other CAA general requirements

¹ 85 FR 57727.

² 86 FR 29522.

³ See 86 FR 37918 (July 19, 2021). This decision and the regulatory changes made in response are discussed in the TSD for this action.

for SIP submittals, including requirements at section 110(a)(2)(A) regarding rule enforceability, and requirements at sections 110(l) and 193 for SIP revisions.

The implementing regulations at 40 CFR 51.165 contain the NNSR program requirements for major stationary sources and major modifications at facilities that are located in a nonattainment area and that are major sources for the pollutants for which the area has been designated nonattainment. Section 110(a)(2)(A) of the Act requires that regulations submitted to the EPA for SIP approval must be clear and legally enforceable. Section 110(l) of the Act prohibits the EPA from approving SIP revisions that would interfere with any applicable requirement concerning attainment and reasonable further progress (RFP) or any other applicable requirement of the CAA. Section 193 of the Act prohibits the modification of a SIP-approved control requirement in effect before November 15, 1990, in a nonattainment area, unless the modification ensures equivalent or greater emission reductions of the relevant pollutant(s). With respect to procedures, CAA sections 110(a) and 110(l) require that a state conduct reasonable notice and hearing before adopting a SIP revision.

B. Do the rules meet the evaluation criteria?

The EPA finds that the submitted rules satisfy the applicable CAA and regulatory requirements. Below, we discuss generally our evaluation of the submitted rules. The technical support document (TSD) for this proposed rulemaking contains a more detailed analysis and is included in the docket for this action.

We find that the revision to Rule 20.1 Section (a) to remove the sentence that was the basis for the deficiency identified in our 2020 NSR Action corrects this deficiency. We find that the submitted rules satisfy the applicable NNSR requirements for both the 2008 and 2015 ozone NAAQS, in that the rules contain the proper major source and major modification thresholds and offset ratio for a Severe ozone nonattainment area. We find that the revisions to Rule 11, “Exemptions,” are approvable as the emissions from new and revised permit exemptions are inconsequential to attainment or maintenance of the NAAQS, considering local air quality

concerns, and as the changes to the rule are otherwise acceptable. We find that the removal of IPT provisions from Rules 20.3 and 20.4 is consistent with the EPA's recent changes to 40 CFR 51.165(a)(11) addressing the *Sierra Club* decision and are therefore approvable. Finally, we find that the other minor non-substantive edits to the rules are approvable.

The submitted rules comply with the substantive and procedural requirements of CAA section 110(l). With respect to the procedural requirements, based on our review of the public process documentation included with the submitted rules, we find that the SDAPCD has provided sufficient evidence of public notice and opportunity for comment and public hearings prior to submittal of this SIP revision and has satisfied these procedural requirements under CAA section 110(l).

With respect to the substantive requirements of CAA section 110(l), we have determined that our approval of the submitted rules would not interfere with the area's ability to attain or maintain the NAAQS or with any other applicable requirements of the CAA. Similarly, we find that the submitted rules are approvable under section 193 of the Act because they do not modify any control requirement in effect before November 15, 1990, without ensuring equivalent or greater emission reductions. The submitted rules are otherwise consistent with criteria for the EPA's approval of regulations submitted for inclusion in the SIP, including the requirement at CAA section 110(c)(2)(A) that submitted regulations be clear and legally enforceable.

For the reasons stated above and explained further in our TSD, we find that the submitted NSR rules satisfy the applicable CAA and regulatory requirements for NNSR permit programs under CAA section 110(a)(2)(A) and part D of title I of the Act and other applicable requirements. This submittal also corrects the deficiency described in our 2020 NSR Action. If we finalize this action as proposed, our action will resolve the limited disapproval of Rule 20.1 and will be codified through revisions to 40 CFR 52.220 (Identification of plan—in part). Elsewhere in this issue of the ***Federal Register***, we are making an interim final determination that will defer the imposition of sanctions triggered by that limited disapproval.

C. Proposed action and public comment

As authorized in section 110(k)(3) of the Act, the EPA is proposing approval of Rules 11, 20.1, 20.3, and 20.4. We are proposing this action based on our determination that the submitted rules satisfy the applicable statutory and regulatory provisions governing regulation of stationary sources under part D of title I of the Act and accompanying regulations at 40 CFR 51.160 through 51.165. In support of our proposed action, we have concluded that our approval would comply with sections 110(l) and 193 of the Act because the amended rules will not interfere with continued attainment of the NAAQS in San Diego County and do not relax control technology and offset requirements.

This action would also revise the regulatory provisions at 40 CFR 52.281(d) concerning the applicability of the visibility Federal implementation plan (FIP) at 40 CFR 52.28 as it pertains to California, to provide that this FIP does not apply to sources subject to review under the District's SIP-approved NNSR program. As described in more detail in the TSD for this action, the EPA has previously found Subsection (e)(3) of District Rule 20.3 acceptable to meet the visibility provisions for sources subject to the NNSR program at 40 CFR 51.307.⁴

We will accept comments from the public on this proposal until **[Insert date 30 days after date of publication in the *Federal Register*]**. If finalized, this action would incorporate the submitted rules into the SIP and our action would be codified through revisions to 40 CFR 52.220, "Identification of plan—in part."

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the SDAPCD rules described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through <https://www.regulations.gov> and at the EPA Region IX Office (please contact the person

⁴ See TSD for 2018 NSR Action at 28.

identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rules do not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: April 29, 2022.

Martha Guzman Aceves,
Regional Administrator,
Region IX.

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